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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,376	04/15/2004	Carl Erik Hansen	112701-574	6618

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EXAMINER	
PADEN, CAROLYN A	

ART UNIT	PAPER NUMBER
1761	

NOTIFICATION DATE	DELIVERY MODE
05/08/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary	Application No.	Applicant(s)	
	10/824,376	HANSEN ET AL.	
	Examiner	Art Unit	
	Carolyn A. Paden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 March 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 26, 2007 has been entered.

The terminal disclaimer filed January 30, 2007 has been entered and the provisional double patenting rejection has been withdrawn.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5 and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ripper in view of Rusoff (2,835,890) for reasons of record.

Ripper discloses the manufacture of chocolate liquor by treating the chocolate with a reduced pressure to remove the undesirable flavors of the

product. Then the chocolate is combined with sugar, cocoa butter, 1% flavoring and lecithin to prepare a chocolate product for molding. Claim 1 appears to differ from Ripper in the suggestion of adding flavor precursors that contain specific ingredients. Rusoff (2,835,590) teaches that combinations of peptides containing glycine or alanine with saccharide materials act to create chocolate flavor. At column 3, line 62 rhamnose is included as a suggested saccharide. At column 2, line 65 proline is included as a flavor enhancing agent. The concept of preparing the flavor ingredient in a fat-based medium is indirectly suggested because anhydrous conditions are required for the reaction at column 3, line 51-52. Thus it would have been obvious to one of ordinary skill in the art to utilize the flavor or Rusoff in the chocolate product of Ripper in order to enhance the chocolate impact of the product. It is appreciated that the specific flavors of claims 2 and 15 are not indicated but these flavor notes are well known descriptors of chocolate. It is also appreciated that "house flavor" and "asset utilization" and "cost reduction" and "recipe flexibility" are not mentioned but these features would be obvious variants of the basic Rusoff teachings. The specificity of these features would vary with the whims of

the market and taste of the consumer and are not seen to add patentable weight to the claims.

Applicant has amended the claims to indicate that the chocolate is made by a conventional process. This amendment has been considered but is not alone seen to overcome the rejection because Ripper also uses conventional processes for chocolate manufacture. Applicant argues that the flavor attributes in Ripper are different from the flavor attributes of the claims. But no difference is seen between the flavor attributes of Ripper in view of Rusoff and the flavor attributes of the claims. Applicant argues that Ripper does not use a conche. This has been considered but is not persuasive because Ripper uses an apparatus that performs the same function as a conche (compare page 1, column 1, lines 20-38 with page 1, column 1, lines 51-65). The effect of the process on the chocolate is the same inspite of the differing apparatus. Also Ripper was published in 1980 and was conventional technology at the time of the filing of this patent application. Applicant argues that there is no suggestion in Ripper to add non-cocoa flavor to the chocolate. This has been considered but is not persuasive because the rejection is not based on Ripper alone. The rejection relies on Rusoff to include the required flavors. Applicant argues

that Rusoff does not fortify chocolate with flavor but rather is an artificial chocolate flavor. If one of ordinary skill in the art wanted to boost the flavor of chocolate without expending valuable chocolate resources, it would be obvious to look to the flavoring provided by Rusoff.

Claims 1- 4, 6 & 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ripper in view of Kleinert (3,769,030) or Watterson (5,676,993).

Ripper discloses the manufacture of chocolate liquor by treating the chocolate with a reduced pressure to remove the undesirable flavors of the product. Then the chocolate is combined with sugar, cocoa butter, 1% flavoring and lecithin to prepare a chocolate product for molding. The claims appear to differ from Ripper in the suggestion of adding flavor precursors that contain specific ingredients. Kleinert teaches the fabrication of milk flavors for use in chocolate by the development of the Maillard reaction products or carmelization reaction products (column 3, lines 48-59 & example 1. Although roasting is not specifically suggested in the reference, no unobvious or unexpected difference is seen between the heat treatment Kleinert and roasting. It would have been obvious to one of ordinary skill in the art to utilize the flavor of Kleinert in the chocolate of

Ripper in order to enhance the caramel or maillard color/flavor of Ripper by using the fabricated flavors of Kleinert.

Similarly Watterson teaches that the Maillard reaction products of sugar and amino acids provide a way of enhancing the cocoa flavor of a fat matrix (see abstract). It would have been obvious to one of ordinary skill in the art to utilize the flavor of Watterson in the chocolate of Ripper in order to enhance the maillard flavor of Ripper by using the fabricated flavors of Watterson.

Applicant argues that the references do not provide any suggestion to add flavor to chocolate. If one of ordinary skill in the art wanted to boost the flavor of chocolate without expending valuable chocolate resources, it would be obvious to look to the flavoring provided by Watterson.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ripper in view of Russoff as applied to claims 1-5 and 11-20 above, and further in view of Eggen (4,343,818).

Ripper discloses the manufacture of chocolate liquor by treating the chocolate with a reduced pressure to remove the undesirable flavors of the product. Then the chocolate is combined with sugar, cocoa butter, flavoring and lecithin to prepare a chocolate product for molding. Claim 9

appears to differ from Ripper in the suggestion of adding flavor precursors that contain specific ingredients. Eggen teaches the application of amylase to cocoa to hydrolyze the cocoa ingredients. One of ordinary skill in the art would expect this process to sweeten the cocoa and provide for more Maillard precursor ingredients. It would have been obvious to one of ordinary skill in the art to use the hydrolysis ingredients of Eggen in the chocolate of Ripper to sweeten the chocolate product.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ripper in view of Rusoff as applied to claims 1-5 and 11-20 above, and further in view of Hansen (5,888,562).

Ripper discloses the manufacture of chocolate liquor by treating the chocolate with a reduced pressure to remove the undesirable flavors of the product. Then the chocolate is combined with sugar, cocoa butter, flavoring and lecithin to prepare a chocolate product for molding. Claim 10 appears to differ from Ripper in the suggestion of adding flavor ingredients obtained by acid treatment and protease treatment. Hansen teaches treating coco nibs with an acid at pH 4 and then adding in carboxypeptidase as a protease treatment. Then the nibs were roasted and processed as usual (examples 3 & 4). It would have been obvious to

one of ordinary skill in the art to treat the chocolate of Ripper by the process of Hansen in order to enhance the flavor precursors in chocolate. It is appreciated that malty flavor is not mentioned but the same acts in the same relation would have been expected to achieve the same results. .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on

access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Carolyn Paden 4-25-07

CAROLYN PADEN
PRIMARY EXAMINER 1761